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SENATE BILL 298

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO DOMESTIC AFFAIRS; EXPANDING A GRANDPARENT'S RIGHT  
TO FILE A PETITION FOR VISITATION UNDER THE GRANDPARENT'S  
VISITATION PRIVILEGES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-9-2 NMSA 1978 (being Laws 1993,  
Chapter 93, Section 3, as amended) is amended to read:

"40-9-2. CHILDREN--VISITATION BY GRANDPARENT--PETITION--  
MEDIATION.--

A. In rendering a judgment of dissolution of  
marriage, legal separation or the existence of the parent and  
child relationship pursuant to the provisions of the Uniform  
Parentage Act, or at any time after the entry of the judgment,  
the district court may grant reasonable visitation privileges  
to a grandparent of a minor child, not in conflict with the

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1 child's education or prior established visitation or time-  
2 sharing privileges.

3 B. If one or both parents of a minor child are  
4 deceased, any grandparent of the minor child may petition the  
5 district court for visitation privileges with respect to the  
6 minor. The district court may order temporary visitation  
7 privileges until a final order regarding visitation privileges  
8 is issued by the court.

9 ~~[C. If a minor child resided with a grandparent for  
10 a period of at least three months and the child was less than  
11 six years of age at the beginning of the three-month period and  
12 the child was subsequently removed from the grandparent's home  
13 by the child's parent or any other person, the grandparent may  
14 petition the district court for visitation privileges with  
15 respect to the child, if the child's home state is New Mexico,  
16 as provided in the Child Custody Jurisdiction Act.]~~

17 ~~D. If a minor child resided with a grandparent for  
18 a period of at least six months and the child was six years of  
19 age or older at the beginning of the six-month period and the  
20 child was subsequently removed from the grandparent's home by  
21 the child's parent or any other person, the grandparent may  
22 petition the district court for visitation privileges with  
23 respect to the child, if the child's home state is New Mexico,  
24 as provided in the Child Custody Jurisdiction Act.]~~

25 C. If a minor child has had some prior contact with

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1 the minor child's biological grandparent, the biological  
2 grandparent may petition the district court for visitation  
3 privileges with that child and the district court may grant the  
4 grandparent reasonable visitation rights with the minor child  
5 upon a finding that the visitation rights would be in the minor  
6 child's best interest.

7 [E.] D. A biological grandparent may petition the  
8 district court for visitation privileges with respect to a  
9 grandchild when the grandchild has been adopted or adoption is  
10 sought, pursuant to the provisions of the Adoption Act, by:

- 11 (1) a stepparent;  
12 (2) a relative of the grandchild;  
13 (3) a person designated to care for the  
14 grandchild in the provisions of a deceased parent's will; or  
15 (4) a person who sponsored the grandchild at a  
16 baptism or confirmation conducted by a recognized religious  
17 organization.

18 [F.] E. When a minor child is adopted by a  
19 stepparent and the parental rights of the natural parent  
20 terminate or are relinquished, the biological grandparents are  
21 not precluded from attempting to establish visitation  
22 privileges. When a petition filed pursuant to the provisions  
23 of the Grandparent's Visitation Privileges Act is filed during  
24 the pendency of an adoption proceeding, the petition shall be  
25 filed as part of the adoption proceedings. The provisions of

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1 the Grandparent's Visitation Privileges Act shall have no  
2 application in the event of a relinquishment or termination of  
3 parental rights in cases of other statutory adoption  
4 proceedings.

5 ~~[G.]~~ F. When considering a grandparent's petition  
6 for visitation privileges with a child, the district court  
7 shall assess:

8 (1) any factors relevant to the best interests  
9 of the child;

10 (2) the prior interaction between the  
11 grandparent and the child;

12 (3) the prior interaction between the  
13 grandparent and each parent of the child;

14 (4) the present relationship between the  
15 grandparent and each parent of the child;

16 (5) time-sharing or visitation arrangements  
17 that were in place prior to filing of the petition;

18 (6) the effect the visitation with the  
19 grandparent will have on the child;

20 (7) if the grandparent has any prior  
21 convictions for physical, emotional or sexual abuse or neglect;  
22 and

23 (8) if the grandparent has previously been a  
24 full-time caretaker for the child for a significant period.

25 ~~[H.]~~ G. The district court may order mediation and

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1 evaluation in any matter when a grandparent's visitation  
2 privileges with respect to a minor child are at issue. When a  
3 judicial district has established a domestic relations  
4 mediation program pursuant to the provisions of the Domestic  
5 Relations Mediation Act, the mediation shall conform with the  
6 provisions of that act. Upon motion and hearing, the district  
7 court shall act promptly on the recommendations set forth in a  
8 mediation report and consider assessment of mediation and  
9 evaluation to the parties. The district court may order  
10 temporary visitation privileges until a final order regarding  
11 visitation privileges is issued by the court.

12 [~~F.~~] H. When the district court decides that  
13 visitation is not in the best interest of the child, the court  
14 may issue an order requiring other reasonable contact between  
15 the grandparent and the child, including regular communication  
16 by telephone, mail or any other reasonable means.

17 [~~J.~~] I. The provisions of the [~~Child-Custody~~  
18 ~~Jurisdiction Act~~] Uniform Child-Custody Jurisdiction and  
19 Enforcement Act and Section 30-4-4 NMSA 1978, regarding  
20 custodial interference, are applicable to the provisions of the  
21 Grandparent's Visitation Privileges Act."